

ORDINANCE NO. 18-07

AN ORDINANCE OF THE CITY OF AUBURN
SEPARATING THE PUBLIC SAFETY
DEPARTMENT INTO POLICE AND FIRE
DEPARTMENTS

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS
FOLLOWS:

Section One: Code Amendment. Section 32.110 of Chapter 32 of Title III of the Auburn Municipal Code is hereby repealed and replaced as follows:

POLICE DEPARTMENT

§ 32.110 CHIEF OF POLICE.

(A) The Chief of Police shall be the chief administrative officer of the Police Department, subject to the administrative direction of the City Manager.

(B) He or she:

(1) Shall be appointed by the City Manager with the consent of the City Council;

(2) Shall hold office during the pleasure of the City Manager;
and

(3) Shall receive compensation as is allowed by the Council.

(C) The Chief of Police shall supervise and be responsible for the performance of all the functions of the Police Department.

Section Two: Code Amendment. Section 32.111 of Chapter 32 of Title III of the Auburn Municipal Code is hereby repealed and replaced as follows:

§ 32.111 POLICE DEPARTMENT; FUNCTIONS.

The functions of the Police Department shall be as follows:

- (A) To maintain law and order in the city;
- (B) To enforce in the city all the laws of the United States, the state, the county and the city which are not specifically and exclusively the responsibility of some other office or agency;
- (C) To observe and report to the Director of Planning and Public Works inoperative or damaged street lights, signs, traffic-control devices and structures;
- (D) To operate the police radio system;
- (E) To promote the proficiency of the members of the Police Department by the administration of training, study and physical conditioning programs;
- (F) To promote traffic safety; and
- (G) To perform such other functions relating to police work as may be required by the City Manager.

Section Three: Code Amendment. Chapter 32 of Title III of the Auburn Municipal Code is hereby amended by adding Sections 32.125 and 32.126, as follows:

FIRE DEPARTMENT

§ 32.125 FIRE DEPARTMENT.

The functions of the Fire Department shall be as follows:

(A) To promote the proficiency of the members of the Fire Department by the administration of training, study and physical conditioning programs;

(B) To prevent and extinguish fires and to manage equipment necessary therefor;

(C) To inspect premises for fire hazards, and if practicable, to abate those hazards in accordance with applicable laws of the United States, the state, the county and the city;

(D) To encourage and promote removal of wood fuels to provide sufficient defensible space on lands directly adjoining city boundaries and within the city and, when appropriate, to coordinate with federal, state and other local governments, the local fire safe council, as well as private parties in this effort; and

(E) To perform such other functions relating to fire safety, suppression, and prevention as may be required by the City Manager.

§ 32.126 FIRE CHIEF.

(A) The Fire Chief shall be the chief administrative officer of the Fire Department, subject to the administrative direction of the City Manager.

(B) He or she:

(1) Shall be appointed by the City Manager;

(2) Shall hold office during the pleasure of the City Manager; and

(3) Shall receive compensation as is allowed by the Council.

(C) The Fire Chief shall supervise and be responsible for the performance of all the functions of the Fire Department.

Section Four: Code Amendment: Subsection (E) of Section 130.084 of Chapter 130 of Title XIII of the Auburn Municipal Code is hereby amended to read as follows:

(E) The responsible person may perform 24 hours of community service and pay city administrative fees, if any, as an alternative to paying the civil penalty with the prior written consent and approval of the Chief of Police or his or her designee.

Section Five: Code Amendment: Subsection (G) of Section 130.084 of Chapter 130 of Title XIII of the Auburn Municipal Code is hereby amended to read as follows:

(G) The Chief of Police or his or her designee shall retain the discretion to approve the community service requested by the responsible person. Upon approval of the Chief of Police or his or her designee to perform community service, the responsible person shall complete the required hours within one year of approval, and shall submit proof of completion to the Chief of Police or his or her

designee. Failure to receive approval to perform community service or failure to complete the required hours of service shall result in imposition of the applicable civil penalty, which is immediately payable. No reduction in the penalty is authorized for completion of less than the required hours of community service as set forth in division (E) unless approved by the City Manager or his or her designee.

Section Six: Code Amendment: Section 130.085 of Chapter 130 of Title XIII of the Auburn Municipal Code is hereby amended to read as follows:

§ 130.085 ADMINISTRATIVE RULES AND REGULATIONS.

The Chief of Police or his or her designee may adopt administrative rules and regulations which are consistent with the provisions of this subchapter for the purpose of implementing the same.

Section Seven: Code Amendment: Subsection (A) of Section 163.09 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

(A) An alcoholic beverage sales establishment's Use Permit may be suspended for up to one year, modified or revoked by the Chief of Police within 10 days after notice thereof, for failure to comply with operational standards, training requirements or conditions of approval imposed through their Use Permit. The permittee shall have the right to a hearing thereon in the manner described in chapter 162 of this code.

Section Eight: Code Amendment: Subsection (B) of Section 163.10 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

(B) If the enforcement officer determines that the activity is in violation of the operational standards and/or conditions of approval, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city's administrative citation procedures contained in sections 10.80 – 10.99 of this code. The first notice of violation shall be given in accordance with section 10.83 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the Chief of Police, who may suspend, modify, or revoke the establishment's Use Permit. The Director's action under this subsection is subject to appeal under chapter 162 of this code.

Section Nine: Code Amendment: Subsection (F) of Section 163.10 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

(F) If in the judgment of the Chief of Police, the operations of the owner or operator of the establishment constitute a nuisance, the owner or operator is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the Chief of Police may suspend, modify, or revoke the activity's Use Permit. All determinations, decisions, and

conditions made or imposed regarding the use of an activity shall run with the land. The Chief of Police's action under this subsection is subject to appeal under chapter 162 of this code.

Section Ten: Code Amendment: Section 163.11 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

163.11 Appeal from suspension, modification or revocation of Use Permit.

Any applicant or other person aggrieved by a decision of the Chief of Police from a suspension, modification or revocation of a Use Permit pursuant to this chapter may appeal the decision pursuant to chapter 162 of this code.

Section Eleven: Code Amendment: Section 163.15 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

163.15 Notification to owners of off-sale establishments conducting deemed approved activities.

The city's Police Department shall, within 30 days of the effective date of this Ordinance, notify the owner and/or operator of all deemed approved off-sale alcohol establishments. The notice shall be sent by first-class mail and certified mail return receipt requested and shall include a copy of the performance standards in this chapter. The performance standards shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

Section Twelve: Code Amendment: Subsection (A) of Section 163.16 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

(A) An alcoholic beverage sales establishment's deemed approved status may be suspended for up to one year, modified or revoked by the Chief of Police within 10 days after notice thereof, for failure to comply with operational standards, training requirements or conditions of approval imposed through their Use Permit. The permittee shall have the right to an appeal pursuant to chapter 162 of this code.

Section Thirteen: Code Amendment: Subsection (B)(5) of Section 163.16 of Chapter 163 of Title XV of the Auburn Municipal Code is hereby amended to read as follows:

(5) Once it is determined by the city that there has been a discontinuance of active operation for 180 consecutive days or a cessation of ABC licensing, it may be resumed only upon the granting of a Use Permit as provided in 163.05 of this code. In the event that any active operation is discontinued on a property for a period of 180 consecutive days, such discontinuance shall be presumed to be abandonment of the use by the property owner. At any time after any active operation is discontinued for a period of 180 consecutive days or more, the Chief of Police, or his or her designee shall notify the property owner in writing of the determination of presumed abandonment of the active operation. Pursuant to chapter 162 of this title, the property owner may appeal the determination to the Chief of Police, which may overturn the determination only upon making a finding that

the evidence supports the property owner's position that the nonconforming use was not discontinued for a period of 180 consecutive days or more. The property owner shall be notified by the city of the termination of the deemed approved status and shall be informed of the property owner's right to appeal the decision.

Section Fourteen: Code Amendment: Subsections (B), (C), (D), and (F) of Section 163.17 of Chapter 163 of Title XV of the Auburn Municipal Code are hereby amended to read as follows:

(B) If the enforcement officer determines that the deemed approved activity is in violation of the performance standards, the enforcement officer shall give written notice of the violation to the owner and/or operator of the establishment and seek to remedy the violation under the city's administrative citation procedures contained in sections 10.80 – 10.99 of this code. The first notice of violation shall be given in accordance with section 10.83 of this code. If, however, the enforcement officer, in his or her sole discretion, determines that the violation is not capable of correction, presents a serious threat to public health or safety, or otherwise warrants expedited action, he or she may in lieu of following the administrative citation procedure, refer the matter directly to the Chief of Police, who may suspend, modify, or revoke deemed approved activity's deemed approved status.

(C) Any administrative citation issued under this section shall be issued, processed, and enforced in compliance with all of the provisions of sections 10.80 – 10.99 of this code, unless otherwise expressly provided by this chapter. If, the owner or operator receiving

an administrative citation contests the citation and a hearing is held pursuant to sections 10.80 – 10.99, the hearing officer may, in addition to exercising all powers designated in sections 10.80 – 10.99, make a recommendation to the Chief of Police to suspend, modify or revoke the deemed approved activity's deemed approved status if in the judgment of the hearing officer, based upon information then before him or her, such action is necessary to ensure compliance with this chapter. Such recommendation may include the suggestion of additional or amended reasonable conditions on the use, including but not limited to, the operational standards listed in section 163.07 and the performance standards listed in section 163.14 of this code.

(D) If the enforcement officer refers the matter directly to the Chief of Police, the Chief of Police may determine whether the deemed approved activity is in compliance with the performance standards. Based on this determination, the Chief of Police may suspend, modify or revoke the deemed approved activity's deemed approved status or impose additional or amended conditions on the use, including but not limited to the operational standards listed in Section 163.07 of this code, based on information then before it. In reaching a determination as to whether a use has violated the performance standards, or as to the appropriateness of suspending, modifying or revoking a deemed approved activity's deemed approved status, or imposing additional or amended conditions on the use, the Chief of Police may consider:

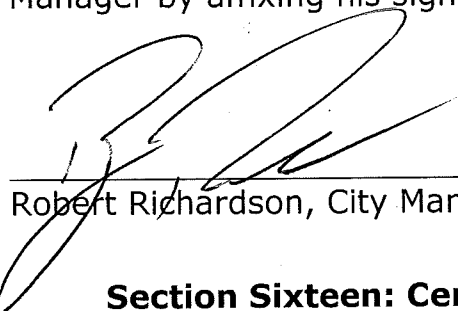
(1) The length of time the deemed approved activity has been out of compliance with the performance standards.

(2) The impact of the violation of the performance standard(s) on the community.

(3) Any information regarding the owner of the deemed approved activity's efforts to remedy the violation of the performance standard(s).

(F) If in the judgment of the Chief of Police, the operations of the owner or operator of the deemed approved activity constitute a nuisance, the owner is unable or unwilling to abate the nuisance and the nuisance is shown to be a threat to the public health and safety of the surrounding neighborhood, the Chief of Police may suspend, modify or revoke the activity's deemed approved status. If suspended, any continued operation of the business shall require a Use Permit approved by the Planning Commission. All determinations, decisions, and conditions made or imposed regarding the use of a deemed approved activity shall run with the land.

Section Fifteen: Effective Date. This Ordinance shall take effect at least thirty days after its final passage as provided by Government Code Section 36937, and upon certification by the City Manager by affixing his signature and the date thereof here:


Robert Richardson, City Manager

Date: 7/9/18

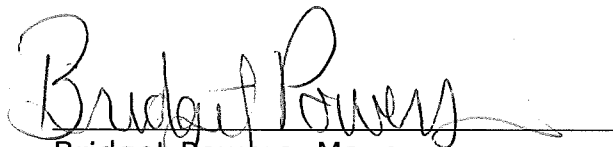
Section Sixteen: Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code

Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

Section Seventeen: Severability. Should any section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any court of competent jurisdiction or by reason of any preemptive legislation, the remaining sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect and, to that end, the provisions hereof are determined to be severable.

Section Eighteen: Construction. To the extent the provisions of the Auburn Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those provisions shall be construed as continuations of the prior provisions and not as new enactments.

DATED: June 09, 2018


Bridget Powers, Mayor

ATTEST:


Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 9th day of June 2018 by the following vote on roll call:

Ayes: Spokely, Berlant, Maki, Kirby, Powers
Noes:
Absent:



Amy Lind, City Clerk